

AMENDED IN ASSEMBLY APRIL 14, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 677

Introduced by Assembly Member Parra
(Coauthor: Assembly Member Spitzer)

February 17, 2005

An act to amend Sections 667.1, ~~667.5~~, 1170.125, and 1192.7 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

AB 677, as amended, Parra. Sentencing: three strikes: solicitation of murder.

Existing law defines certain listed felonies as “serious” ~~and “violent”~~ for, among other purposes, enhancing the punishment for felonies pursuant to existing sentencing provisions commonly known as the “Three Strikes” law. Existing law, amended by initiative Proposition 21, which allows the Legislature to amend its provisions by a 2/3 vote, fixed the list of serious ~~and violent~~ felonies for purposes of the Three Strikes law as of the date the initiative was adopted by the voters, March 7, 2000.

This bill would add solicitation of murder to the list of serious ~~and violent~~ felonies, for purposes of amending ~~those lists~~ *that list* and for purposes of the Three Strikes provisions. The bill would amend the date fixing the date of the ~~lists~~ *list* for purposes of Three Strikes by providing that the references to the ~~lists are as they~~ *list are as it* existed on the effective date of this bill.

By expanding the scope of a sentencing enhancement, this bill would impose a state-mandated local program.

By amending the provisions of an initiative statute, this bill would require a 2/3 vote of the Legislature.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 667.1 of the Penal Code is amended to
2 read:

3 667.1. Notwithstanding subdivision (h) of Section 667, for all
4 offenses committed on or after the effective date of this act, all
5 references to existing statutes in subdivisions (c) to (g), inclusive,
6 of Section 667, are to those statutes as they existed on January 1,
7 2006, including amendments made to those statutes by the act
8 enacted during the 2005-06 Regular Session that amended this
9 section.

10 ~~SEC. 2. Section 667.5 of the Penal Code is amended to read:~~

11 ~~667.5. Enhancement of prison terms for new offenses because~~
12 ~~of prior prison terms shall be imposed as follows:~~

13 ~~(a) Where one of the new offenses is one of the violent~~
14 ~~felonies specified in subdivision (c), in addition to and~~
15 ~~consecutive to any other prison terms therefor, the court shall~~
16 ~~impose a three-year term for each prior separate prison term~~
17 ~~served by the defendant where the prior offense was one of the~~
18 ~~violent felonies specified in subdivision (c). However, no~~
19 ~~additional term shall be imposed under this subdivision for any~~
20 ~~prison term served prior to a period of 10 years in which the~~
21 ~~defendant remained free of both prison custody and the~~
22 ~~commission of an offense which results in a felony conviction.~~

23 ~~(b) Except where subdivision (a) applies, where the new~~
24 ~~offense is any felony for which a prison sentence is imposed, in~~
25 ~~addition and consecutive to any other prison terms therefor, the~~
26 ~~court shall impose a one-year term for each prior separate prison~~
27 ~~term served for any felony; provided that no additional term shall~~
28 ~~be imposed under this subdivision for any prison term served~~
29 ~~prior to a period of five years in which the defendant remained~~

1 free of both prison custody and the commission of an offense
2 which results in a felony conviction.

3 (e) For the purpose of this section, “violent felony” shall mean
4 any of the following:

5 (1) Murder or voluntary manslaughter.

6 (2) Mayhem.

7 (3) Rape as defined in paragraph (2) or (6) of subdivision (a)
8 of Section 261 or paragraph (1) or (4) of subdivision (a) of
9 Section 262.

10 (4) Sodomy by force, violence, duress, menace, or fear of
11 immediate and unlawful bodily injury on the victim or another
12 person.

13 (5) Oral copulation by force, violence, duress, menace, or fear
14 of immediate and unlawful bodily injury on the victim or another
15 person.

16 (6) Lewd acts on a child under the age of 14 years as defined
17 in Section 288.

18 (7) Any felony punishable by death or imprisonment in the
19 state prison for life.

20 (8) Any felony in which the defendant inflicts great bodily
21 injury on any person other than an accomplice which has been
22 charged and proved as provided for in Section 12022.7 or
23 12022.9 on or after July 1, 1977, or as specified prior to July 1,
24 1977, in Sections 213, 264, and 461, or any felony in which the
25 defendant uses a firearm which use has been charged and proved
26 as provided in Section 12022.5 or 12022.55.

27 (9) Any robbery.

28 (10) Arson, in violation of subdivision (a) or (b) of Section
29 451.

30 (11) The offense defined in subdivision (a) of Section 289
31 where the act is accomplished against the victim’s will by force,
32 violence, duress, menace, or fear of immediate and unlawful
33 bodily injury on the victim or another person.

34 (12) Attempted murder.

35 (13) A violation of Section 12308, 12309, or 12310.

36 (14) Kidnapping.

37 (15) Assault with the intent to commit mayhem, rape, sodomy,
38 or oral copulation, in violation of Section 220.

39 (16) Continuous sexual abuse of a child, in violation of
40 Section 288.5.

1 ~~(17) Carjacking, as defined in subdivision (a) of Section 215.~~

2 ~~(18) A violation of Section 264.1.~~

3 ~~(19) Extortion, as defined in Section 518, which would~~
4 ~~constitute a felony violation of Section 186.22 of the Penal Code.~~

5 ~~(20) Threats to victims or witnesses, as defined in Section~~
6 ~~136.1, which would constitute a felony violation of Section~~
7 ~~186.22 of the Penal Code.~~

8 ~~(21) Any burglary of the first degree, as defined in subdivision~~
9 ~~(a) of Section 460, wherein it is charged and proved that another~~
10 ~~person, other than an accomplice, was present in the residence~~
11 ~~during the commission of the burglary.~~

12 ~~(22) Any violation of Section 12022.53.~~

13 ~~(23) A violation of subdivision (b) or (c) of Section 11418.~~

14 ~~(24) Solicitation of murder, as defined in subdivision (b) of~~
15 ~~Section 653f.~~

16 ~~The Legislature finds and declares that these specified crimes~~
17 ~~merit special consideration when imposing a sentence to display~~
18 ~~society's condemnation for these extraordinary crimes of~~
19 ~~violence against the person.~~

20 ~~(d) For the purposes of this section, the defendant shall be~~
21 ~~deemed to remain in prison custody for an offense until the~~
22 ~~official discharge from custody or until release on parole,~~
23 ~~whichever first occurs, including any time during which the~~
24 ~~defendant remains subject to reimprisonment for escape from~~
25 ~~custody or is reimprisoned on revocation of parole. The~~
26 ~~additional penalties provided for prior prison terms shall not be~~
27 ~~imposed unless they are charged and admitted or found true in~~
28 ~~the action for the new offense.~~

29 ~~(e) The additional penalties provided for prior prison terms~~
30 ~~shall not be imposed for any felony for which the defendant did~~
31 ~~not serve a prior separate term in state prison.~~

32 ~~(f) A prior conviction of a felony shall include a conviction in~~
33 ~~another jurisdiction for an offense which, if committed in~~
34 ~~California, is punishable by imprisonment in the state prison if~~
35 ~~the defendant served one year or more in prison for the offense in~~
36 ~~the other jurisdiction. A prior conviction of a particular felony~~
37 ~~shall include a conviction in another jurisdiction for an offense~~
38 ~~which includes all of the elements of the particular felony as~~
39 ~~defined under California law if the defendant served one year or~~
40 ~~more in prison for the offense in the other jurisdiction.~~

~~(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.~~

~~(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.~~

~~(i) For the purposes of this section, a commitment to the State Department of Mental Health as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.~~

~~(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Director of Corrections is incarcerated at a facility operated by the Department of the Youth Authority, that incarceration shall be deemed to be a term served in state prison.~~

~~(k) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.~~

~~This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.~~

~~SEC. 3.~~

~~SEC. 2. Section 1170.125 of the Penal Code is amended to read:~~

~~1170.125. Notwithstanding Section 2 of Proposition 184, as adopted at the November 8, 1994 General Election, for all offenses committed on or after the effective date of this act, all references to existing statutes in Section 1170.12 are to those~~

1 statutes as they existed on January 1, 2006, including
2 amendments made to those statutes by the act enacted during the
3 2005-06 Regular Session that amended this section.

4 ~~SEC. 4.~~

5 *SEC. 3.* Section 1192.7 of the Penal Code is amended to read:

6 1192.7. (a) Plea bargaining in any case in which the
7 indictment or information charges any serious felony, any felony
8 in which it is alleged that a firearm was personally used by the
9 defendant, or any offense of driving while under the influence of
10 alcohol, drugs, narcotics, or any other intoxicating substance, or
11 any combination thereof, is prohibited, unless there is insufficient
12 evidence to prove the people's case, or testimony of a material
13 witness cannot be obtained, or a reduction or dismissal would not
14 result in a substantial change in sentence.

15 (b) As used in this section "plea bargaining" means any
16 bargaining, negotiation, or discussion between a criminal
17 defendant, or his or her counsel, and a prosecuting attorney or
18 judge, whereby the defendant agrees to plead guilty or nolo
19 contendere, in exchange for any promises, commitments,
20 concessions, assurances, or consideration by the prosecuting
21 attorney or judge relating to any charge against the defendant or
22 to the sentencing of the defendant.

23 (c) As used in this section, "serious felony" means any of the
24 following:

25 (1) Murder or voluntary manslaughter; (2) mayhem; (3) rape;
26 (4) sodomy by force, violence, duress, menace, threat of great
27 bodily injury, or fear of immediate and unlawful bodily injury on
28 the victim or another person; (5) oral copulation by force,
29 violence, duress, menace, threat of great bodily injury, or fear of
30 immediate and unlawful bodily injury on the victim or another
31 person; (6) lewd or lascivious act on a child under the age of 14
32 years; (7) any felony punishable by death or imprisonment in the
33 state prison for life; (8) any felony in which the defendant
34 personally inflicts great bodily injury on any person, other than
35 an accomplice, or any felony in which the defendant personally
36 uses a firearm; (9) attempted murder; (10) assault with intent to
37 commit rape or robbery; (11) assault with a deadly weapon or
38 instrument on a peace officer; (12) assault by a life prisoner on a
39 noninmate; (13) assault with a deadly weapon by an inmate; (14)
40 arson; (15) exploding a destructive device or any explosive with

1 intent to injure; (16) exploding a destructive device or any
2 explosive causing bodily injury, great bodily injury, or mayhem;
3 (17) exploding a destructive device or any explosive with intent
4 to murder; (18) any burglary of the first degree; (19) robbery or
5 bank robbery; (20) kidnapping; (21) holding of a hostage by a
6 person confined in a state prison; (22) attempt to commit a felony
7 punishable by death or imprisonment in the state prison for life;
8 (23) any felony in which the defendant personally used a
9 dangerous or deadly weapon; (24) selling, furnishing,
10 administering, giving, or offering to sell, furnish, administer, or
11 give to a minor any heroin, cocaine, phencyclidine (PCP), or any
12 methamphetamine-related drug, as described in paragraph (2) of
13 subdivision (d) of Section 11055 of the Health and Safety Code,
14 or any of the precursors of methamphetamines, as described in
15 subparagraph (A) of paragraph (1) of subdivision (f) of Section
16 11055 or subdivision (a) of Section 11100 of the Health and
17 Safety Code; (25) any violation of subdivision (a) of Section 289
18 where the act is accomplished against the victim's will by force,
19 violence, duress, menace, or fear of immediate and unlawful
20 bodily injury on the victim or another person; (26) grand theft
21 involving a firearm; (27) carjacking; (28) any felony offense,
22 which would also constitute a felony violation of Section 186.22;
23 (29) assault with the intent to commit mayhem, rape, sodomy, or
24 oral copulation, in violation of Section 220; (30) throwing acid or
25 flammable substances, in violation of Section 244; (31) assault
26 with a deadly weapon, firearm, machinegun, assault weapon, or
27 semiautomatic firearm or assault on a peace officer or firefighter,
28 in violation of Section 245; (32) assault with a deadly weapon
29 against a public transit employee, custodial officer, or school
30 employee, in violation of Sections 245.2, 245.3, or 245.5; (33)
31 discharge of a firearm at an inhabited dwelling, vehicle, or
32 aircraft, in violation of Section 246; (34) commission of rape or
33 sexual penetration in concert with another person, in violation of
34 Section 264.1; (35) continuous sexual abuse of a child, in
35 violation of Section 288.5; (36) shooting from a vehicle, in
36 violation of subdivision (c) or (d) of Section 12034; (37)
37 intimidation of victims or witnesses, in violation of Section
38 136.1; (38) criminal threats, in violation of Section 422; (39) any
39 attempt to commit a crime listed in this subdivision other than an
40 assault; (40) any violation of Section 12022.53; (41) a violation

1 of subdivision (b) or (c) of Section 11418; (42) solicitation of
2 murder, in violation of subdivision (b) of Section 653f; and (43)
3 any conspiracy to commit an offense described in this
4 subdivision.

5 (d) As used in this section, “bank robbery” means to take or
6 attempt to take, by force or violence, or by intimidation from the
7 person or presence of another any property or money or any other
8 thing of value belonging to, or in the care, custody, control,
9 management, or possession of, any bank, credit union, or any
10 savings and loan association.

11 As used in this subdivision, the following terms have the
12 following meanings:

13 (1) “Bank” means any member of the Federal Reserve System,
14 and any bank, banking association, trust company, savings bank,
15 or other banking institution organized or operating under the laws
16 of the United States, and any bank the deposits of which are
17 insured by the Federal Deposit Insurance Corporation.

18 (2) “Savings and loan association” means any federal savings
19 and loan association and any “insured institution” as defined in
20 Section 401 of the National Housing Act, as amended, and any
21 federal credit union as defined in Section 2 of the Federal Credit
22 Union Act.

23 (3) “Credit union” means any federal credit union and any
24 state-chartered credit union the accounts of which are insured by
25 the Administrator of the National Credit Union administration.

26 (e) The provisions of this section shall not be amended by the
27 Legislature except by statute passed in each house by rollcall
28 vote entered in the journal, two-thirds of the membership
29 concurring, or by a statute that becomes effective only when
30 approved by the electors.

31 ~~SEC. 5.~~

32 *SEC. 4.* No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the
37 penalty for a crime or infraction, within the meaning of Section
38 17556 of the Government Code, or changes the definition of a

- 1 crime within the meaning of Section 6 of Article XIII B of the
- 2 California Constitution.

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